



# GRIC

## **Foundations for Prosecution Conference**

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Virtual Via Zoom

# **CLOSING ARGUMENT**

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Distributed by:

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# CLOSING ARGUMENTS

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# Closing Argument

- ▣ Closing Argument is your only chance to combine the facts and the law in a way that demonstrates why the Defendant is guilty of what you have charged him with
- ▣ Goal of closing argument should be to eliminate the greatest threat to a conviction:

CONFUSION

# Confusion = Reasonable Doubt



# Where do we go wrong?

- ▣ Disorganization
  - Absence of theme and theory
  - Repetitive argument which loses juror's attention
  - Becoming lost in unimportant details
- ▣ Lack of preparation
- ▣ Repetition of inherently confusing trial presentation
  - "You heard from Det. Smith....he told you..."
- ▣ Presenting facts without connecting them to guilt

# Closing - Preparation



- ▣ Preparation for your closing starts when you begin to prep for your case
- ▣ Set yourself up well:
  - Case overview sheet
  - Trial Notebook with notes for each witness, opening, closing

# Closing - Preparation

- ▣ Take good notes during trial. This is what a 2<sup>nd</sup> chair is for. ( or even a case agent)
- ▣ Use your notes to help incorporate what occurred in the trial into your closing argument
  - Highlight good quotes
  - Pull out important photos and physical evidence
- ▣ Rather than going witness by witness, think about what each witness said or did that helps support your theme/theory/elements

# THE OUTLINE

- ▣ Theme
- ▣ Theory of your case in narrative form
- ▣ Elements
  - Identify and eliminate uncontested
  - Describe contested
  - Instructions relevant to winning contested
- ▣ Define “Reasonable Doubt”
  - Firmly Convinced
- ▣ List evidence that shows “Firmly Convinced” on disputed evidence
- ▣ Theme and call to Action



# Theme

- ▣ What did the Defendant do that deserves punishment
- ▣ Anchor the case to moral outrage
- ▣ These are the FIRST words out of your mouth
  - As the first words out of your mouth, they are the ones the jurors are most likely to remember. Do not waste them on thank yous and apologies

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# Narrative

- ▣ Just like in opening, you will present the jury with your case theory in narrative format
- ▣ This differs from the narrative in your opening only in that you can now use actual testimony and evidence to enhance your story. This narrative can and should be argument!
- ▣ However, do NOT “step outside” of the story in order to argue. That will come later

# Narrative

- ▣ Utilize direct quotes from trial testimony:

“I don’t think anyone should take pride in taking another man’s life. Regardless of the circumstances, he had a family, and that brings me sadness. It’s not something I think should be celebrated or talked about”

“I felt forced to do this”



# Narrative

- ▣ DO NOT:
  - Repeat what each witness told them at trial in the order they told it
    - ▣ ...” and then you heard from\_\_\_\_\_, who told you\_\_\_\_\_.”
  - Describe what the police did in order to bring the Defendant to justice



Your goal is not to prove beyond a reasonable doubt what the officers did

# Narrative

- Remember, you are forcing the jury to choose between your theory of the case and the Defendant's





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# Elements – Eliminate Confusion

- ▣ In almost all cases, a number of elements are simply not in dispute
  - For example: If the defense is ID, the Defendant isn't really contesting that the crime occurred, he's just saying it wasn't him that did it
- ▣ By eliminating the undisputed elements, you tailor your argument to what matters and show the jurors where to focus



# Elements – Eliminate Confusion

- ▣ When eliminating elements, visuals can be extremely effective
- ▣ How the jurors the actual instruction or elements of the offense and cross out the elements which are not in dispute
- ▣ Remember to still own the burden of proof

# Elements – Eliminate Confusion

11.052

## First-Degree Felony Murder

The crime of first-degree felony murder requires proof that:

1. The defendant ~~committed~~ or attempted to commit ~~Armed Robbery~~, and
2. In the course of and in furtherance of this crime or ~~immediate flight from this crime, the defendant or another person caused the death of any~~  
person

# Elements – Eliminate Confusion



- ▣ Do this for each count until you are only left with what your trial is really about
- ▣ Explain to the jury that when they deliberate, this is where their focus should be

# Review Important Instructions

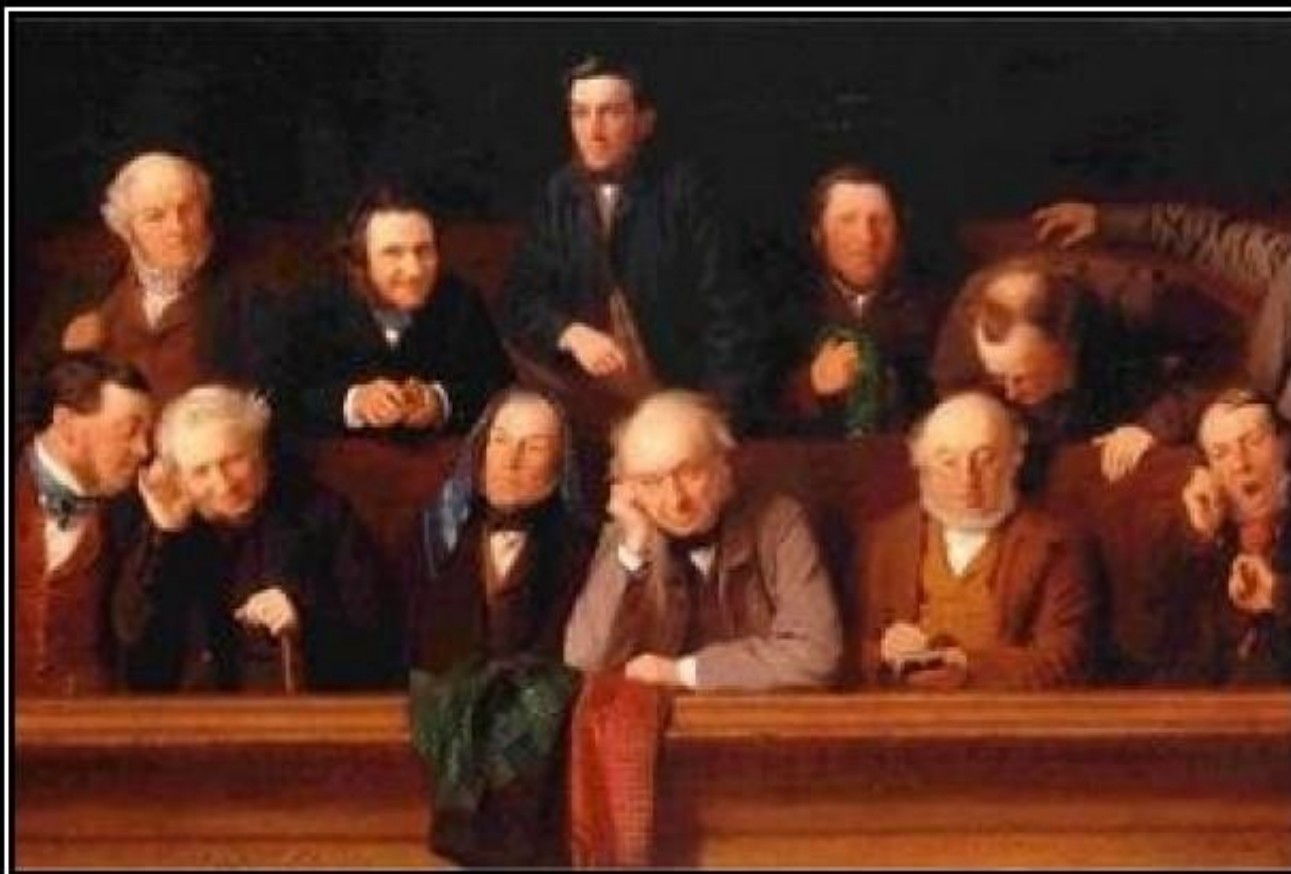
- ▣ Once you've narrowed the focus to the disputed elements, you want to give the jury a guide for how to resolve those disputed elements:
  - Which jury instructions play an important role in the jury's determination on the disputed issue?
    - ▣ Self defense/justification
    - ▣ Definition of "intent"
    - ▣ Direct vs. circumstantial evidence
  - Don't be afraid to make suggestions as to how they should proceed

# Review Important Instructions

- ▣ Refer your jurors to specific instructions by page number and title
- ▣ Put the instruction into your powerpoint directly
- ▣ Jury instructions are written by lawyers, and therefore full of confusion. Help them!
  - Example: accomplice liability

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# REASONABLE DOUBT

Confusing the hell out of jurors since 1657



# Portillo Instruction

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If, on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.



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# Make a List

- ▣ Now its time for the crux of your closing argument
- ▣ It should be focused on the disputed element(s) only
- ▣ In order to stay organized, avoid repetition, and eliminate confusion, you need to clearly lay out your argument in a manner which is both persuasive and easy to follow/remember

# Make a List

- ▣ The best way to do this is to group evidence into categories and provide the jury a list of reasons to convict:
  - “Members of the Jury, there are 5 reasons why you should be firmly convinced that the Defendant is the one who committed this robbery”
  - “Members of the jury, there are 15 pieces of evidence that show why you should be firmly convinced the Defendant was the one who started this fire”

# Make a List

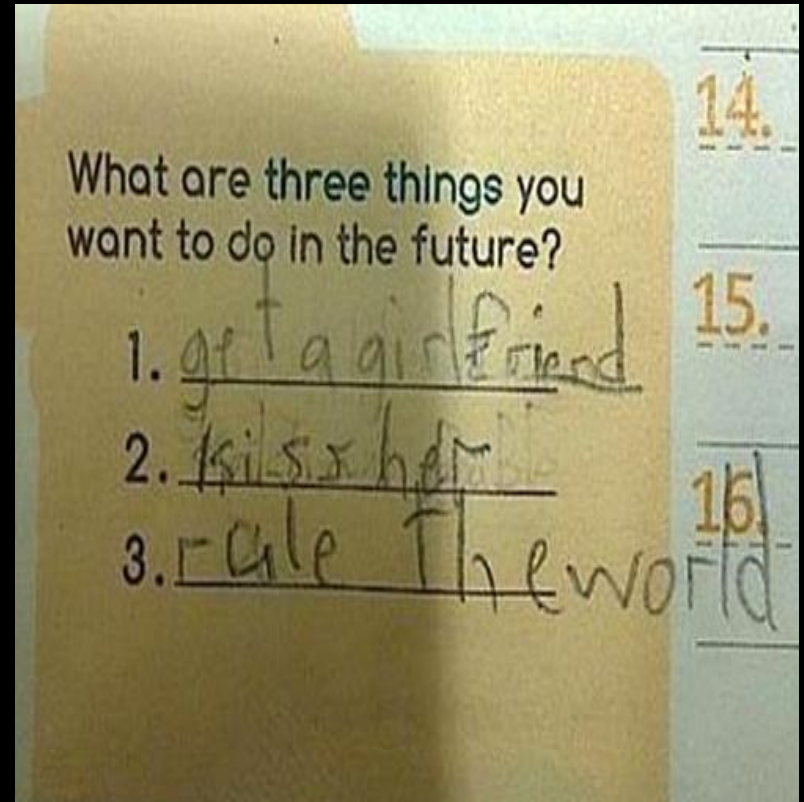
- ▣ Organize this in a way that makes the most sense for your case
- ▣ Try to think about ways to group evidence
- ▣ Examples:
  - Physical evidence
    - ▣ Knife, gun, blood, fingerprints, DNA, shell casings
  - Defendant's statements
  - Timeline
  - Digital Evidence
    - ▣ Cell phone records, metadata, geofence

# Make a List

- ▣ Present your list to the jury as a visual
  - Powerpoint, document camera, whiteboard/sharpie
- ▣ Make your arguments as you add to the list
  - Give meaning to the evidence
  - Explain connections/importance/relevance
  - Invite the jury to review for themselves
- ▣ Utilize the term “firmly convinced” in argument

# Make a List

- ▣ Why this works:
  - People like lists
  - Lists are organized and easy to follow
  - Jurors will copy down lists
  - Emphasizes the totality of the case against the Defendant



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# Close Strong

- ▣ Theme and call to action
- ▣ Tell the jury exactly what you want them to do
- ▣ Prepare something ahead of time!

“Find the defendant guilty on all counts. The facts lead you to his guilt. The evidence proves it, and justice demands it”



# The Art of Persuasion

- ▣ When it comes to persuasiveness, prosecutors have a distinct advantage:

TRUTH



# Closing Tips

Me after a long day of being a magical  
ass b [REDACTED]



- ▣ Don't be afraid to suggest an order of deliberations
- ▣ Rhetorical questions can be extremely effective
- ▣ Be organized – do NOT ramble



# Questions???